IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE THIRTIETH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE B. SUDERSHAN REDDY

and
THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 5533 of 1998

Between:

M.Varalaxmi W/o Lakshmi Narasimha Murthi
D.No.111, Manalagiri, Guntur Dist

..... PETITIONER

AND

1 The Speical Court under the AP.Land Grabbing (Prohibition) Act at Hyderabad
2 Sakhamuri Manohari W/o Sampurna Narayana
Kopparu ,Peddanandi-Padu Village, Krishna District
3 Suravarapu Venkatarathamma W/o Late Koti Reddy
Tummalacheruvu, Piduguralla Mandal, Guntur Dist
4 Suravarapu Sambi Reddy son of Late Koti Reddi
Upstairs, Balemmavari Choultry 6/3, Arundalpeta, Guntur
5 Suravarapu Sivaramakrishna Reddy son of Late Koti Reddy
Driver, APSTRC Nagireddy Bazar, Macherla Guntur Dist
6 Guntupalli Bapaiah son of Late Ramaiah
Upstairs of Balammavari Choultryk, 6/3 Arundalpet, Guntur
7 Guntupalli Mohna Rao son of Late Ramaiah
Kranti Harika Apartments Plot No. 27, H.No. 316, Sarornagar Hyderabad
8 Karlapudi Suseelamma w/o Raghva Rao
Near ground nut Factory Kottapeta, Guntur
9 The Speical Tribunal Under AP Land Grabbig (Prohibition) Act Dist Judge Guntur
10 Venigandll Subbaravamma alias Lakshmi W/o Subba Rao
3rd line, Rajendra Nagar Guntur

.....RESPONDENT(S)

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction more in the nature of Writ of Certiorari and quash the common order passed by the Respondent No. 1 dt. 28/02/1997 in L.G.A.No.6/96 and L.G.A.No.38/95 after calling for the records and direct the respondent NO. 1 to reconsider the L.G.A.No.6 of 1996 based on the entire material on record

Counsel for the Petitioner:MR.NUTY RAM MOHAN RAO

Counsel for the Respondent No.: MR.K.HARINATH

The Court made the following :

The Sri Justice B. Sudershan Reddy

a n d

The Hon'ble Sri Justice K.C. Bhanu

Hon'ble

WRIT PETITION No. 5533 OF 1998

O R D E R: (per Sri Justice K.C. Bhanu)

The writ petition is filed under Article 226 of the Constitution of India to issue a writ, order or direction more particularly in the nature of writ of Certiorari and to quash the common order passed by the Special Court under the A.P. Land Grabbing (Prohibition) Act, 1982 (for short, 'Land Grabbing Act) dated 28.2.1997 in L.G.A.Nos. 6 of 1996 and 38 of 1995 and for a consequential direction to reconsider L.G.A. 6 of 1996.

The petitioner herein filed an application under Section 7 of the Land Grabbing Act stating that an extent of 682 Sq. yards in

D.No.13 of Nallapadu village of Guntur Municipality was purchased by her father-in-law under Registered Sale Deed dated 10.10.1945 by proper consideration and he was put in possession of the same. It seems one Korrapati Venkat Rao made false promise to her father-in-law and took away the original sale deed of the site and with the help of the said Venkat Rao the 1st respondent therein (who is the 2nd respondent in this writ petition) illegally grabbed the land taking advantage of the absence of the applicant's father-in-law. The applicant approached the 1st respondent asking her to vacate the site. A house with Zinc sheets roof was constructed surrounded by compound wall. The said site belongs to Magilicharla Venkatappaiah Sarma and now to the applicant through G.P.A. dated 16.7.1988 executed by Venkatappaiah Sarma and the applicant is the absolute owner of the said site. Sri Venkatappaiah Sarma, the father-in-law of the applicant, died on 23.12.1992. By a registered will dated 26.8.1992 the schedule property was bequeathed in favour of the applicant. Therefore the applicant-petitioner became absolute owner of the petition schedule property. Hence the petition.

The respondent No.1 filed counter stating that herself and her husband purchased the schedule property after making due enquiries of the title deeds through an Advocate Sri P.L. Narayana after giving due publication in the Newspapers calling for objections. Therefore the 1st respondent is not land grabber and the Special Tribunal has no jurisdiction to entertain the petition. There is no dispute that the site as per the schedule originally belonged to Nagam Krishna Murthy from whom a sale deed dated 2.8.1944 was obtained by one Kshatri Heerabayamma. The suit site was

purchased by Suravarapu Koti Reddy in the name of the said Heerabayamma. Later Heerabayamma died issueless. Later, S. Koti Reddy returned to Guntur in the year 1980 and put up a terraced roof and started living therein by paying municipal tax. The respondent No.1 also mutated her name in the municipal records. Therefore, the respondent No.1 is a bona fide purchaser for value after due enquiry. Hence she prayed to dismiss the petition with costs.

To substantiate the case of the applicant, 6 witnesses were examined and 8 documents were marked. On behalf of the respondents, one witness was examined and 38 documents were marked. The Special Judge under Land Grabbing Act came to the conclusion that the 2nd respondent is a Land Grabber and the 1st respondent derived character of land grabber by virtue of Ex.B-1 and therefore the 1st respondent is directed to pay the present value of the total extent of the land with profits of Rs.2,000/- per year for unauthorized use of land from 1977 onwards. Aggrieved by the same, L.G.A. 6 of 1996 and L.G.A. 38 of 1995 were preferred by the parties before the Special Court under the Land Grabbing Act, Hyderabad. The Special Court set aside the findings of the Tribunal dismissing the L.G.O.P 18 of 1989 by holding that the father-in-law of the applicant did not derive any title to the petition schedule property under Ex.A-2 and there was no evidence to show that Venkatappaiah Sarma was in possession of the schedule property for over 12 years prior to the filing of the petition. Aggrieved by the same, the present writ petition is filed.

For better appreciation of the case, the parties are referred to as arrayed in LGOP 18 of 1989 before the Special Tribunal.

Learned counsel Sri Nooty Ram Mohan Rao, appearing on behalf of the writ petitioner-applicant, contended that the father-in-law of the petitioner purchased the schedule property under a registered sale deed under Ex.A-2; that by virtue of the registered will dated 26.8.1992 under Ex.A-7 the petitioner got the property; that the scribe of the will was examined including an attestor who spoke about the execution of the will; that the well-considered judgment of the Special Tribunal was reversed by the Special Court and there was an error apparent on the face of the record in doing so resulting in miscarriage of justice; that the observation of the Special Court suspecting the will with regard to the deprivation of natural heirs of Venkatappaiah Sarma in bequeathing the property are unwanted and the same cannot a ground to disbelieve the will; that the widow of Venkatappaiah Sarma supported the case of the writ petitioner, but the Special Court disbelieved the will on the ground that the last sentence in the will was found to have been inserted subsequently and that therefore there was a suspicion. The learned counsel also relied upon certain decisions to support his contentions.

On the other hand, learned counsel Mr. K. Harinath, appearing for the 2nd respondent herein, contended that the petitioner has not title by the date of filing of L.G.O.P. 18 of 1989; therefore, on this ground alone the petition has to be dismissed; that after the execution of the will the petitioner was not brought on record as legal representative for claiming the will. Therefore, the subsequent events cannot be taken into consideration especially when the petition is not filed for and on behalf of Mr. M. Venkatappaiah Sarma. He further contended that there is no

evidence to show that Venkatappaiah Sarma enjoyed the property during his life time or that he was in possession of the property; the vendor's thumb impression was not found in Ex.A-2 and therefore Ex.A-2 does not create any title to Venkatappaiah Sarma; that there was no endorsement by the registering authority that the contents in Ex.A-2 were admitted by the vendor of Venkatappaiah Sarma and that Ex.A-2 is not proved; that though Venkatappaiah Sarma was having wife, daughters and sons by the date of his death, there was no explanation why the schedule property was given to his daughter-in-law only. The 2nd respondent is having tax receipts to show her possession and she is a bona fide purchaser for value who, after giving publication in the Newspapers calling for objections if any, purchased the property and that there are absolutely no grounds to interfere with the judgment of the Special Court under the Land Grabbing Act.

It is well settled that the Certiorari jurisdiction is amenable to correction if the error committed by the Court or Authority on whose judgment the High Court was exercising the jurisdiction should be an error which is self-evident. The law is settled that this court can interfere with the decision of the Subordinate Courts or Tribunals where there is an error manifest and apparent on the face of the proceedings such as (1) when it is based on clear misreading or utter disregard to the provisions of law and (2) a grave injustice or gross failure of justice has occasioned thereby. In a decision of this court in ***Panchumarthi Anuradha v. Avala Nagarani***, it is held by one of us (Justice B. Sudershan Reddy) as follows:

> "As has been held by the higher Courts in India, a writ of Certiorari will issue

to correct the errors of jurisdiction as when the inferior Court or Tribunal acts without jurisdiction or in excess of it or fails to exercise it. A writ of Certiorari can also be issued if there is an error of law, which is apparent on the face of the record. Such an error must be patent on the face of the record. Such an error must be manifest on the face of the record".

Learned counsel for the petitioner herein relied upon a decision of the Constitution Bench of Supreme Court in ***Syed Yakoob v. Radhakrishnan*** wherein it is held:

> "It is, of course, not easy to define or adequately describe what an error of law apparent on the face of the record means. What can be corrected by a writ has to be an error of law; but it must be such an error of law as can be regarded as one which is apparent on the face of the record. Where it is manifest or clear that the conclusion of law recorded by an inferior Court or Tribunal is based on an obvious mis-interpretation of the relevant statutory provision, or sometimes in ignorance of it, or may be, even in disregard of it, or is expressly founded on reasons which are wrong in law, the said conclusion can be corrected by a writ of certiorari".

It is further held therein:

> "If a statutory provision is reasonably capable of two constructions and one construction has been adopted by the inferior Court or Tribunal, its conclusion may not necessarily or always be open to correction by a writ of certiorari. In our opinion, it is neither possible nor desirable to attempt either to define or to describe

> adequately all cases of errors which can be appropriately described as errors of law apparent on the face of the record".

Bearing the principles laid down by the Constitution Bench in the above decision, now it has to be seen whether there is an error apparent on the face of the record in arriving at the conclusion by the Special Court under the Land Grabbing Act?

The application was filed by the petitioner-applicant under Section 7 of the Land Grabbing Act claiming that she is the absolute owner. The said petition was filed before the Tribunal in the year 1989. Even as per the applicant's claim, she is not the owner of the property and through a will executed by M. Venkatappaiah Sarma on 26.8.1992 in a sound and disposing state of mind, she became the owner of the property. The original petition is not filed for and on behalf of M. Venkatappaiah Sarma by the applicant or under the General Power of Attorney dated 16.7.1988. Therefore, the Special Tribunal ought not to have numbered the petition when she is not the owner of the property by the date of filing of the petition. Be that as it may, the claim of the petitioner-applicant is in pursuance of a registered will Ex.A-7 dated 26.8.1992 executed by M. Venkatappaiah Sarma, which is found to be suspicious according to the Special Court. Unless the findings are perverse or not based upon the evidence on record, normally this court will not interfere with the said findings. M. Venkatappaiah Sarma, according to the petitioner-applicant, purchased the property in question under registered sale deed dated 10.10.1945 from K. Heerabayamma. Insofar as execution of Ex.A-2 is concerned, the Special Court held

that there was no execution of the sale deed as the vendor under Ex.A-2 did not put her thumb impression or any other mark in any one of the pages. Therefore, no title was passed to M. Venkatappaiah Sarma under Ex.A-2.

To substantiate the contention that Ex.A-2 is a validly executed document, learned counsel for the petitioner relied upon a decision of the Privy Council in ***Gopal Das v. Sri Thakurji*** wherein it is held:

> "where the objection to be taken is not that the document is in itself inadmissible but that the mode of proof put forward is irregular or insufficient, it is essential that the objection should be taken at the trial before the document is marked as an exhibit and admitted to the record. A party cannot lie by until the case comes before a Court of appeal and then complain for the first time of the mode of proof".

Learned counsel for the petitioner relied upon another decision of the Calcutta High Court in ***Rajani Mandal v. Digindra Mohan*** wherein it is held:

> "Once it is established that it is the ordinary practice among illiterate persons to sign documents by touching the pen and authorizing another person to sign by writing their name for them in their presence this appears to me to be a sufficient signing, and therefore in the present case the endorsement must be regarded as having been signed by the person making the payment".

But in this case admittedly there was neither any mark

made by the vendor nor there was any evidence to show that the vendor authorized the execution of Ex.A-2. No doubt there is a statutory presumption of law that the registration proceedings were not wrong and honestly carried out but before such presumption can be drawn, it must be proved that it was executed by Heerabayamma for valid consideration. We have perused Ex.A-2. As rightly pointed out by the Special Court, no thumb marks are found on any of the pages except on the second page of the document where some thumb impression was found. That thumb impression is not proved to have been put by Heerabayamma. Therefore, the above decisions relied upon by the learned counsel for the petitioner have no application to the present facts of the case. It is no doubt true that the signature includes a mark as per Section 3(56) of the General Clauses Act, but there is absolutely no evidence to show that the vendor under Ex.A-2 put her thumb mark on Ex.A-2.

Learned counsel for the petitioner contended that the presumption under Section 90 of the Evidence Act can be drawn because it is a 30-year old document. No doubt the presumption under this Section can be drawn when the signature and every other part of the document which purports to be in the hand writing of any particular person, is in that person's handwriting, and, in the case of a document executed or attested, that it was duly executed and attested by the persons by whom it purports to be executed and attested. In our considered opinion, this Section comes into play only when the document contained the signature and it is proved to be 30-year old. No doubt, Ex.A-2 is more than 30-year-old document, but there is no thumb mark on Ex.A-2. Therefore, the presumption under Section 90 of the Evidence Act is of no avail to the writ petitioner.

On this aspect, the learned counsel for the respondent No.2 relied upon a decision of Calcutta High Court in ***Kali Charan v. Sudhir Chandra*** wherein it is held:

> "Furthermore, this has to be noted with interest that Bamanmoni did not put her signature or thumb impression on the kobala dated 14.3.51 (Exs.3). The mere writing of her name for herself and as mother guardian of minor Kalicharan through the pen of Abhoy Charan Naskar does not prove that Bamanmoni actually executed the said kobala".

None of the witnesses examined on behalf of the writ petitioner-applicant speaks about the execution of Ex.A-2 or putting the thumb mark on Ex.A-2 by Heerabayamma. So, the father-in-law of the writ petitioner M. Venkatappaya Sarma did not get any right, title and interest in respect of the schedule property. If really Ex.A-2 is a genuine document said to have been executed by Heerabayamma under Ex.A-2, then certainly the name of M.Venkatappaya Sarma would have been mutated in municipal records. No document is filed to show that in pursuance of Ex.A-2 M. Venkatappaya Sarma took possession of the property and he had been in possession and enjoyment of the property. Therefore, rightly the Special Court held that there was no execution at all and no title passed to M. Venkatappaya Sarma under Ex.A-2. The reasoning given by the Special Court cannot be said to be perverse or contrary to the evidence on record.

Coming to the second question whether the petitioner gets the property under Ex.A-7 will, the Special Court disbelieved the

will on two grounds. Firstly, the entire property was bequeathed to the daughter-in-law without bequeathing anything to the sons, daughters and wife and, secondly, the document was written on a paper which has already contained the thumb impression of M. Venkatappaya Sarma. On these two grounds, the Special Court doubted the genuineness of Ex.A-7.

With regard to the principles governing the interpretation of will, learned counsel for the petitioner relied upon a decision of the Supreme Court in ***Uma Devi Nambiar v. T.C. Sidhan***, wherein it is held as follows:

> "A Will is executed to alter the ordinary mode of succession and by the very nature of things, it is bound to result in either reducing or depriving the share of natural heirs. If a person intends his property to pass to his natural heirs, there is no necessity at all of executing a Will. It is true that a propounder of the Will has to remove all suspicious circumstances. Suspicion means doubt, conjecture or mistrust. But the fact that natural heirs have either been excluded or a lesser share has been given to them, by itself without anything more, cannot be held to be a suspicious circumstance especially in a case where the bequest has been made in favour of an offspring. As held in P.P.K. Gopalan Nambiar v. P.P.K. Balakrishnan Nambiar (1995 Supp (2) SCC 664) it is the duty of the propounder of the Will to remove all the suspected features, but there must be real, germane and valid suspicious features and not fantasy of the doubting mind. It has been held that if the propounder succeeds in removing the suspicious circumstance, the court has to give effect to the Will, even if the Will might be unnatural in the sense that it has cut off wholly or in part near relations. (See Pushpavathi v. Chandraraja Kadamba

> – (1973) 3 SCC 291). In Rabindra Nath Mukherjee v. Panchanan Banerjee (1995) 4 SCC 459 it was observed that the circumstance of deprivation of natural heirs should not raise any suspicion because the whole idea behind execution of the Will is to interfere with the normal line of succession and so, natural heirs would be debarred in every case of Will. Of course, it may be that in some cases they are fully debarred and in some cases partly".

A perusal of the above decision shows that bequeathing the properties depriving the natural heirs by itself cannot be said to be a suspicious circumstance so as to disbelieve the will. If there is any property available to M. Venkatappaiah Sarma and some property was bequeathed to his daughter-in-law, then there would not be any doubt to suspect the will. M. Venkatappaiah Sarma has got only this property and none else. Therefore, in the facts and circumstances of the case, the propounder of the will has to remove this suspicion. It would be a different matter if M.Venkatappaiah Sarma has no other legal heirs. The Special Court did not doubt the will on this ground alone. The other circumstance is that the sentences became close under Ex.A-7 to each other and there was an anxiety on the part of the scribe to adjust the matter within the available space over the thumb impression. The another circumstance to doubt Ex.A-7 will is that it does not contain the signature of M.Venkatappaiah Sarma. It only contained a thumb mark. The reasoning given by PW-3 who is the scribe is that the executant was suffering from Paralysis stroke and therefore he was not able to put his signature. That was not at all stated by PW-1 who is the proper and competent person to speak about the health condition of her father-in-law. The reason given in

Ex.A-7 appears to have been incorporated subsequently. Therefore, in these circumstances the Special Court rightly disbelieved Ex.A-7. The findings cannot be said to be errors apparent on the face of the record.

Now it has to be seen whether the possession of respondent No.2 can be said to be land grabbing within the meaning of Section 2(d) and 2(e) of the Land Grabbing Act?

Section 2(d) of the Land Grabbing Act defines 'land grabber' and Section 2(e) defines the expression 'land grabbing' in the following terms:

> " 'Land Grabber' means a person or a group of persons who commits land grabbing and includes any person who gives financial aid to any person for taking illegal possession of lands or for construction of unauthorized structures thereon, or who collects or attempts to collect from any occupiers of such lands, rent, compensation and other charges by criminal intimidation; or who abets the doing of any of the above mentioned acts; and also includes the successors in interest".
>
> 'Land Grabbing' means every activity of grabbing of any land (whether belonging to the Government, a local authority, a religious or charitable institution or endowment, including a wakf, or any other private person: by a person or group of persons, without any lawful entitlement and with a view to illegally taking possession of such lands or enter into or create illegal tenancies or lease and licence agreements or any other illegal agreements in respect of such lands, or to construct unauthorized structures thereon for sale or hire, or give

such land to any person on rental or lease and licence basis for construction, or use and occupation, of unauthorized structures, and the term "to grab land" shall be construed accordingly".

From the above, it is clear that if the 2nd respondent without any lawful entitlement and with a view to take illegal possession entered into the land, then it is not a case of land grabbing. The 2nd respondent purchased the property after calling for the objections if any by giving paper publication. She is in the possession of the property purchased under registered sale deed. Under Ex.B-2 the 2nd respondent made paper publication on 1.3.1987. On 7.8.1988 the mutation proceedings have been taken place in the municipal records in the name of the 2nd respondent. The 2nd respondent filed house tax receipts from the year 1980 onwards. These tax receipts show that the 2nd respondent has been in continuous possession and enjoyment of the property. Therefore, the 2nd respondent is a bona fide purchaser for value and she cannot be said to be land grabber since she has not entered into possession illegally without any lawful entitlement.

For the aforesaid reasons, the impugned judgment does not suffer from any error of law apparent on the face of the record so as to call for interference by this court. The writ petition is devoid of merit and it is accordingly dismissed. In the circumstances, no costs.

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B. Sudershan Reddy, J.

_____

K.C. Bhanu, J.

Date: --09—2004.

MVB.

..... REGISTRAR

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SECTION OFFICER

To

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